

Department for Children and Families (DCF) Proposal For H.665 and H.762

Presented to House Committee on Judiciary by:

Jennifer Myka, General Counsel, DCF

Catherine Clark, Director, Commissioner's Registry Review Unit (CRRU), DCF

Nancy Miller, Child Safety Manager, Family Services Division, DCF

The Commissioner's Registry Review Unit (CRRU) Overview

Unit was Established 10/1/2007

Background

The path to Family Services Division (FSD) substantiation determinations.

- Following a report of child maltreatment:
 - Intake Screening
 - Track Assignment – Assessment or Investigation
 - Substantiation
 - Review period
 - Placement of name on the Child Protection Registry
- Substantiation and placement on the Registry is a process that is separate from any court proceedings.

What is the Child Protection Registry?

33 V.S.A. Chapter 49

- ❖ A confidential database containing records of all investigations that resulted in a substantiated report of child abuse or neglect on or after January 1, 1992. - **§ 4916**
- ❖ It is not accessible by the general public. Records can be shared for employment purposes only with the signed consent of the individual. - **§ 4919**
- ❖ A stated purpose is to balance the need to protect children with the potential employment consequences of a registry record for persons who are substantiated for child abuse and neglect. - **§ 4911(5)**

A Registry Record Contains...

§ 4916a

- ❖ The individual's name
- ❖ At least one other identifying fact (it's their DOB)
- ❖ The date and nature of the finding: physical, sexual, risk of harm for physical injury or sexual abuse, neglect, or abandonment
- ❖ A tier level related to the individual's risk of future harm to children for all records after 7/1/2009, relating to expungement eligibility timeframes (§ 4916(e))

Review Process

The CRRU contracts with independent administrative reviewers to conduct reviews of the substantiation determination.

1. A request for review is made to the CRRU.
2. The reviewer meets with the individual who can provide documentation or other information for the reviewer to make the most accurate decision.
3. The burden is on DCF to prove that law and policy criteria for substantiation were satisfied.
4. If the reviewer upholds the substantiation determination, the individual can appeal to the HSB and then to the Supreme Court.

Expungement Process

The Commissioner decides whether to expunge a registry record.

- ❖ A person placed on the registry can petition for expungement of their registry record after a certain number of years.
- ❖ Currently there are four tier levels related to risk of future harm to children: 1, 3, 7, and 15 years.
- ❖ The standard is whether a reasonable person believes the individual continues to present a risk to the safety or wellbeing of children.
- ❖ Aside from a single narrow exception, there is no automatic expungement of registry records.

Data

There are currently around 25,000 names on the Vermont Child Protection Registry.

- ❖ FSD's most recent numbers (2022) show:
 - ❖ **19,725** reports of child maltreatment
 - ❖ **2,386** reports were accepted for investigation
 - ❖ **593** investigations were substantiated
- ❖ CRRU's latest numbers (2023) show:
 - ❖ **517** requests received for review/expungement
 - ❖ **447** requests processed for review/exp
 - ❖ **339** review/exp decision letters were finalized (**405** subs)
 - ❖ Of those involving reviews, **82.5%** were upheld
- ❖ CRRU consists of the director, **3** full-time administrative services coordinators, and (currently) **8** contracted administrative registry reviewers.

Accessing Records

How DCF Gets Law Enforcement Records

- DCF engages in joint investigations with law enforcement for child protection
 - 33 V.S.A. § 4915 (g): DCF “shall report to and receive assistance from” law enforcement in certain instances (e.g. child sexual abuse, serious physical abuse/neglect, potential danger to child or worker, incident in which child suffers)
 - 33 V.S.A. § 4915 (f): DCF “may collaborate” with others, such as law enforcement or other departments/agencies or jurisdictions to evaluate risk to child and determine service needs

Why Does DCF Work Jointly with Others?

- Protects victims from undue, repetitive interviewing and related trauma
- Prevent confusion between child protection responders
- Share expertise
- Protect criminal cases

How Are DCF Records Protected

- DCF's records of abuse and neglect have detailed list of who must or may receive our records. If the entity seeking the record is not on the list, they cannot receive the records.
 - 33 V.S.A. § 4921 et seq.
- “A person who intentionally violates the confidentiality provision of this section shall be fined not more than \$2,000.” 33 V.S.A. § 4921 (g)

Why Does the CRRU Need Access to Our Retained Records After Sealing/Expungement?

- DCF may not be aware a case has been sealed/expunged.
- Substantiation cases have a lower standard of review and consequently can move forward even if a criminal case is dismissed.
- Often our most serious cases necessarily involve law enforcement, so we do not produce the records on our own.
- Pre-conviction and post-conviction sealing and expungement make related criminal records unavailable for reviews and expungement considerations.

DCF's Proposal Options to Allow Continued Access to Records

Option 1

- Make clear in Title 13 that any records in DCF possession are not criminal records and may be utilized by DCF in the course of its business, as provided by 33 V.S.A. § 4921 (a)
 - “The Department may use and disclose information from such records in the usual course of its business, including to assess future risk to children, to provide appropriate services to the child or members of the child’s family or for other legal purposes.”

Option 2

- Create exception in Title 13:
 - §§ 7606 and 7607(e): Information and materials gathered by DCF in the course of a joint investigation with law enforcement, including law enforcement affidavits and related references to such information and materials, are considered Department records that may be relied on in the Department's decision to substantiate allegations of abuse or neglect and shall be maintained as statutorily prescribed by 33. V.S.A. §§ 4915(f) and (g), 4921(a) and 4921(d)(4).